



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 05825-99
2 December 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Serg [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 13 September 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board was unable to find the contested fitness report should show it was based on "infrequent" rather than daily observation, noting the reporting senior's observation need not be direct. They were likewise unable to find the report reflects the wrong period you held your billet. They found you were not entitled to receive two different fitness reports for the period covered, from different reporting seniors, since the reviewing officer says you were not given orders to a different assignment, but were merely moved away from exposure to weapons systems. They were unable to find you were not counseled about perceived shortcomings. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They were unable to find the report at issue was used as a counseling tool. Finally, they did not find the comments and marks of the contested report to be inconsistent, nor did they find the comments "unprofessional."

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

5825-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610

MMER/PERB

SEP 13 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) SSgt [REDACTED] Form 149 of 6 Apr 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 7 September 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980509 to 980731 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes there should have been two separate fitness reports written for the inclusive period; that observation should be "infrequent" vice "daily"; that the duty assignment is incorrect; that Section B ratings are not substantiated by Section C comments; and that comments included in Section C are unprofessional. To support his appeal, the petitioner furnishes statements from Sergeants Major [REDACTED] and [REDACTED]

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that both the Reviewing Officer and Third Sighting Officer addressed the challenges to the report surfaced by the petitioner in his initial rebuttal. Those are the same concerns he now raises in reference (a). The bottom line is that, given the circumstances documented in the report, there is nothing that violates either the spirit or intent of reference (b). The issue is that the petitioner was arrested for slapping his wife and pleaded guilty to a misdemeanor charge. That information was correctly recorded via the Performance Evaluation System and constitutes neither an error nor an injustice. It is an uncontroverted matter of fact, so acknowledged by the petitioner in his rebuttal statement.

b. The statements by the two Sergeants Major are unsubstantiated in their claims that the Reporting Senior was

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biased and unprofessional. Given the Marine Corps' policy of "zero tolerance" for domestic violence, the Board finds it inconceivable that Sergeants Major [REDACTED] both infer the reporting of the petitioner's assault on his wife was unduly considered. The Board also wonders how either of these senior enlisted Marines could opine that the report somehow reflects "animosity", "lack of professionalism", or "disdain" on the part of the Reporting Senior since, except for those areas directly relating to the domestic violence incident, the report is an overall "outstanding" evaluation. Additionally, neither Sergeant Major was in the petitioner's chain of command at the time. Rather, their observations cover periods prior to the reporting period in which the incident occurred. Finally, the Board takes grave exception with Sergeant Major [REDACTED] reference to "an alleged domestic violence incident." It is factual!

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps